

BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against

JOHN JOSEPH ATHERTON
3609 Hemlock Way
Reno, Nevada 89509

Physical Therapy License No. PT-14387

Respondent.

Case No. 1D 2000 62723

OAH No. N2002020458

DECISION AFTER NONADOPTION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Truckee California on June 4, 2002.

Mara Faust, Deputy Attorney General, Health Quality Enforcement Unit, Department of Justice, State of California, represented the Physical Therapy Board, Department of Consumer Affairs, State of California.

John Joseph Atherton, P.T., appeared and represented himself.

Evidence was received, oral argument was made and the matter was submitted for Decision on June 4, 2002.

The proposed decision of the Administrative Law Judge was submitted to the Physical Therapy Board (hereinafter "Board") on June 28, 2002. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on August 20, 2002 issued a Notice of Nonadoption of Proposed Decision. Written argument having been received from both parties and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board pursuant to Section 11517 of the Government Code hereby makes the following decision:

FACTUAL FINDINGS

1. Steven K. Hartzell, acting in his official capacity as Executive Officer, Physical Therapy Board (hereafter "the Board"), Department of Consumer Affairs, State of California, made the charges and allegations contained in the Accusation and caused it to be filed on January 4, 2002. The Board has jurisdiction to issue, deny, revoke suspend or impose other disciplinary conditions or limitations upon any license to practice physical therapy in the State of California.¹ John Joseph Atherton, P.T., timely filed a Notice of Defense to the Accusation. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings.

2. Mr. Atherton applied to the Board as an Applicant Graduate of a Foreign Physical Therapy School for the issuance of a license to practice as a Physical Therapist in the State of California on March 23, 1987. Mr. Atherton signed the application on March 2, 1987, attesting that all the statements made in his Application to the Board were true and correct under penalty of perjury. In his application, Mr. Atherton advised the Board he had received his professional training as a Physical Therapist in Leeds, England, and furnished documentation that he had been granted a Diploma of the Leeds School of Physiotherapy, Leeds, Great Britain, in 1983. Mr. Atherton also advised the Board that he had been previously licensed as a Physical Therapist in England and in Illinois, where he was living at the time of the application. Mr. Atherton also applied to the Board for the issuance of a Physical Therapy license by reciprocity on March 20, 1987. The reciprocity application was based upon issuance of a license to Mr. Atherton by the State of Illinois by examination, which Mr. Atherton passed and was licensed to practice as a Physical Therapist in Illinois on January 10, 1987.

3. The Board issued Mr. Atherton license number PT-14387 on August 5, 1987, based upon the application. The license is expired with an expiration date of September 30, 2002. Mr. Atherton's address of record with the Board on the date of the evidentiary hearing was P.O. Box 376, Tahoe City, California, 3810 Forest Road, Carnelian Bay, California 96146. The Administrative Law Judge inquired at the commencement of the evidentiary hearing whether the addresses of record were correct. Mr. Atherton advised he had moved to Reno, Nevada, and had been living at the address set forth in the caption, for approximately six months before the evidentiary hearing. He expressed surprise that he was required to timely inform the Board of the change of address of record.

4. Mr. Atherton used licensure in California and Illinois to apply for licensure in Colorado by reciprocity on August 10, 1989. He applied under the name of Jon J. Atherton. Mr. Atherton furnished the Colorado Board a San Diego, California address as his residence and a Social Security number, and signed the application, attesting the statements made on it were true under penalty of perjury.

¹ Business and Professions Code Section 2660.

5. Mr. Atherton was advised by the Colorado Board on June 23, 1989 that he had failed the examination required for reciprocity licensure. Mr. Atherton was advised of his alternatives by the Colorado Board but was specifically advised that he would not be issued a temporary permit to practice in Colorado until he passed the examination.

6. The Colorado Board received an inquiry from the Administrator of Aspen Valley Hospital, Aspen, Colorado, dated May 8, 1990 regarding the status of Mr. Atherton's licensure to practice in Colorado. It is not entirely clear what prompted the inquiry, but the administrator attached a copy of the license Mr. Atherton had presented to the Hospital in support of his application to become employed and practice Physical Therapy at the Hospital. The copy of the license stated Jon Joseph Atherton, P.O. Box 9003, Aspen, Colorado had been issued Registration Number 3177 on 07/07/89 as a Physical Therapist in the State of Colorado. The license was signed "Jon Atherton". The Hospital employed Mr. Atherton as a Physical Therapist based on the presentation of the license beginning in November 1988, until the response from the Colorado Board was received, as set forth just below.

7. The Colorado Board advised the Aspen Valley Hospital Administrator on May 14, 1990 that the copy of the license submitted with the inquiry was fraudulent, and that Mr. Atherton had never been licensed by the Colorado Board. The Colorado Board advised the Administrator of the options it had provided to Mr. Atherton when he attempted to obtain licensure by examination and reciprocity, and further advised the administrator that the license submitted by the Administrator had been issued to Douglas Len Hanna, and the signature of Mr. Atherton on the license was on a license not issued to him.

8. The State of Colorado filed an action in May 1990, in the District Court, City and County of Denver, seeking an injunction against Mr. Atherton, preventing him from practicing Physical Therapy in Colorado without a valid issued license, and to prevent him from using the fraudulently obtained license to obtain employment in Colorado. The action was resolved when Mr. Atherton stipulated to the entry of a permanent injunction on October 10, 1990, in which Mr. Atherton stipulated he would not hold himself out as a Physical Therapist or practice Physical Therapy in Colorado without a license, and would not submit billings for health insurance reimbursement holding himself out as a licensed Physical Therapist.

9. The Board, then called the Physical Therapy Examining Committee, caused an Accusation to be filed against Mr. Atherton on June 22, 1995, in California, based upon the actions against Mr. Atherton in Colorado. The action was resolved by Stipulation between Mr. Atherton and the Board on January 30, 1996, which included the entry of an Agreed Order against Mr. Atherton effective December 1, 1995. The Agreed Order placed Mr. Atherton on probation to the Board for a period of three years, subject to a number of terms and conditions, including the taking of a course in Jurisprudence, performing 5 hours per month community service in the form of providing free physical therapy services, and payment of costs of investigation of \$2239.00.

10. Mr. Atherton filed a Petition for Early Termination of Probation on June 18, 1999. Mr. Atherton filed a Narrative Statement with his Petition dated June 1, 1999. Mr. Atherton advised the Board in the Narrative that "Since 1989, my character and responsibilities have undergone considerable change. I am now married and have a young child. I have purchased a home and have come to realize my responsibilities and that my actions have consequences. I have endeavored to grow both as a person and as a physical therapist and have learned and benefited from previous mistakes." Mr. Atherton added "I feel that I have paid for these allegations monetarily and personally. I lost my job and my home in Colorado and had to relocate and reside in the State of California against my wishes for the past ten years. I have attended a 7-hour ethics seminar sponsored by the California Medical Association. I have completed over 100 hours of community service, paid over \$2000 in costs, and have been on probation for the last three years. I have endured embarrassment and humiliation at the hands of employers, co-workers and anyone I have volunteered my time to." Mr. Atherton pointed out that the California Accusation at Page 2, lines 23-27, through Page 3, lines 1-5 are inaccurate regarding the circumstances of what actually occurred in Colorado, and therefore the Accusation is "incorrect, misleading and wrong." Mr. Atherton concluded, "I made a mistake as a young man and I feel like I have learned from this mistake and paid for this mistake. I hope that you can see the responsible person I have become and will terminate my probation immediately." Mr. Atherton's probationary period was tolled for one additional year beyond its original term for reasons not entirely clear from the record but possibly because Mr. Atherton had trouble complying with the term that required him to perform free physical therapy as a community service. He had difficulty finding places in the North Lake Tahoe area willing to participate in such an arrangement with a probationer, due to liability issues.

11. The Board caused an investigation to be commenced when Mr. Atherton filed the Petition. The Board's investigation revealed that Mr. Atherton had made the false statements and misrepresentations regarding his status in the United States, as set forth below. Probation ended December 1, 1999, evidently without any action on the Petition. The investigation was still pending and the discoveries made by the Board's investigators regarding the causes for disciplinary action alleged in the current Accusation were still being developed at the time probation expired.

12. Mr. Atherton legally entered the United States in 1986 on an H-1 visa, sponsored by a hospital in Bloomington, Illinois, giving him the legal right to work in the U.S. for a specified period. He always intended to move across the country, working as he went, and then on to Australia and New Zealand. Mr. Atherton moved to San Diego in 1987, and obtained a change in visa sponsorship to Grossmont Hospital, where he practiced legally as a physical therapist under his visa and his newly issued California Physical Therapist license. He met other "Brits" who had entered the U.S. legally but overstayed their visas and had made no effort to renew them because the INS was so lax on following up. He fell in with this crowd and never bothered to get his visa renewed. He had already legally obtained a Social Security number, an Illinois driver's license and the first California driver's license, as set forth below, while his H-1 visa was

still valid. He moved from San Diego to Aspen, Colorado in 1988 with his friends, and took their advice that the INS was so slow on catching up to visa holders such as himself, that he could stay indefinitely without worrying about renewing the visa. He obtained work at the Aspen Valley Hospital as a Physical Therapist for the winter of 1988, then moved back to San Diego for the summer. He worked seasonally in Aspen and then San Diego until his use of the fraudulent license was discovered by the Aspen Valley Hospital. Since the process of renewing a visa and transferring sponsors is a very lengthy and "red tape" laden process, Mr. Atherton decided to follow his friends' advice and example, and move back and forth between Aspen and San Diego, assuming as they did that there would likely be few consequences if he did not bother to pursue the visa renewal process. Mr. Atherton overstayed his visa, failed to renew it and get his sponsorship transferred and did not obtain legal residence status.

13. Following the problems he encountered when he attempted to deceive Aspen Valley Hospital about his Colorado license status, and the Colorado Board's action against him, Mr. Atherton moved to the Lake Tahoe area in late 1991. Mr. Atherton found work as a Physical Therapist but was not required as part of his employment to disclose his visa or immigration status to his employer, nor did he volunteer the information. He knew he was living and working in the U.S. illegally, but was able to continue to live and work as a Physical Therapist in the Tahoe Truckee area for several years without any inquiry from employers or the U.S. Immigration and Naturalization Service.

14. Mr. Atherton obtained the issuance of California Driver's License Number A1875322 in 1988 or 1989. He obtained the license under the name of Jon Joseph Atherton. The license expired on September 8, 1990. It is not known whether the license was renewed. Mr. Atherton obtained the issuance of California Driver's License number B3465220 on March 28, 1996. He obtained this license under the name John Atherton. Mr. Atherton insisted he did disclose on the Department of Motor Vehicles' application for the second license the fact that he had been issued a previous driver's license in his name by the Department, but that he could not remember the number and he did not have the license any more.

15. Mr. Atherton completed an application for employment as a Physical Therapist at Tahoe Forest Hospital District, Tahoe North Rehabilitation Services, Inc., doing business as Tahoe Forest Therapy Services, Truckee, California on January 3, 1996. The application asks the question, "Can you, after employment, submit verification of your legal right to work in the United States?" Mr. Atherton checked the box "Yes". Mr. Atherton completed a United States Department of Justice, Immigration and Naturalization Service (hereafter "INS") Form I-9 on January 3, 1996. The form was completed as part of the above application for employment by Mr. Atherton and submitted to his employer for filing with the INS and the Internal Revenue Service. On the form, the statement appears, "I attest, under penalty of perjury, that I am (check one of the following)", with three possible responses. Mr. Atherton checked the response "A citizen or national of the United States."

16. Mr. Atherton's statements on his application that he had the legal right to work in the United States and could prove it, and on the Form I-9 that he was a U.S. citizen, were intentionally false. Mr. Atherton had trapped himself in a web of lies regarding his status in the United States when he was faced with completing the application and Form I-9. Mr. Atherton had been working in the area for more than five years, had purchased a home, had developed a good client base and loyal following, with many referral clients as well as an excellent reputation with his employer, local physicians, and professional peers for his skill, competence and effectiveness as a Physical Therapist. He also discovered a love for the United States and the life he had built, and wanted to settle rather than move on, as he had originally planned. He wished to maintain the life he had developed and he feared deportation or being excluded from being able to work.

17. Mr. Atherton's desire to stay in the United States was enhanced with the development of a serious relationship with the daughter of a retired U.S. Navy Captain he ultimately married in New York on July 12, 1997. Although Mr. Atherton was well aware that he could marry to avoid his immigration problems, he married Nissa Rundberg because he loves her and wanted to build a life with her, not to avoid deportation. Mr. Atherton is, by all reports in evidence and observation of the obvious, a committed and supportive husband and a devoted and doting father to his young daughter. His testimony that began with his impassioned display of his daughter's photo on a calendar he displays in his home, his caveat that he did not have her appear because he was concerned about the stress the threat to their family the action represents to one so young, and his wife's passionately supportive testimony in support of her husband were poignant and persuasive. Her testimony that he was willing to work to support her and care for their child while she invested two years finishing her college degree in accounting was particularly impressive.

18. The Board's probation monitor assigned to oversee Mr. Atherton's probation compliance interviewed and briefed him regarding his probationary obligations at the commencement of probation. She advised him he was required to give a copy of the Stipulation, the probation conditions and a copy of the Accusation to his employer, and to make full disclosure quarterly regarding his compliance with all terms and conditions of probation. The probation monitor repeatedly asked Mr. Atherton during the probationary period about his compliance with probation. Mr. Atherton routinely advised he had fully complied with all terms and conditions of probation.

19. The investigator discovered the discrepancy regarding the two different California Driver's licenses and his use of the names Jon Atherton and John Atherton, seemingly interchangeably. She discovered that Mr. Atherton had checked the box on his application to the Department of Motor Vehicles that he had not applied for a driver's license under any other name in the last seven years. She confronted Mr. Atherton about the discrepancies. Mr. Atherton told her his true name was John, but from an early age he had been known as Jon. He explained how he managed to obtain a second driver's license as above, because the first had expired and he did not remember the number or have the license any longer. It did not then appear that the

issuance of the second license was the product of an intentional fraud or intention to deceive. From that time forward, the probation monitor asked Mr. Atherton consistently whether he had ever gone by any other names, or whether he had any other information to report regarding obeying all laws. Mr. Atherton consistently replied "No."

20. Mr. Atherton filed Quarterly Declarations every quarter for the four years he was on probation to the Board between December 1, 1995 and December 1, 1998. In each and every Quarterly Declaration, Mr. Atherton declared under penalty of perjury that he had obeyed all laws of the United States and the State of California, and that he was fully in compliance with all the terms and conditions of his probation.

21. The investigator spoke to Mr. Atherton at length on September 27, 1999 during an unannounced visit to his employment at Tahoe Forest Therapy Services. She asked particularly about whether Mr. Atherton had provided a copy of the Accusation to his employer. Mr. Atherton assured the investigator that he had provided a copy of the Accusation to his employer, Mr. and Mrs. Larson. She asked about the I-9 Form. Mr. Atherton advised he had provided a copy of his H-1 visa and his green card to all his employers. The investigator inquired why he would need a green card if he was a U.S. citizen, as he declared on his I-9. Mr. Atherton advised he thought having a green card and an H-1 visa was the same as being a citizen. The investigator asked for a copy of Mr. Atherton's green card, and advised Mr. Atherton that his personnel file at Tahoe Forest Therapy did not have a copy of his green card in it. Mr. Atherton agreed to provide a copy but advised he had forgotten his wallet that day and did not have the green card in his possession. He further advised that the INS had spelled his name wrong on his green card and that he was married to a U.S. citizen. Mr. Atherton agreed to furnish his employer and the investigator a copy of his green card, marriage certificate, and his birth certificate by October 4, 1999.

22. The investigator called Mr. Atherton on October 6, 1999. She advised that Ms. Larson did not have a copy of the Accusation and that Mr. Atherton had not given her a copy. She asked about the rest of the documentation he promised to furnish. Mr. Atherton said he was too busy and forgot, but promised to furnish the documents. The next day, the investigator called Mr. Atherton at his home and asked about the documents. She advised the copy of the green card he faxed to Ms. Larson the day before was illegible. He acknowledged he had not furnished a copy of the Accusation or his green card to his employer, but would do so the next day. Mr. Atherton then admitted that some of his statements to the investigator had not been entirely accurate. He admitted he quit furnishing his H-1 visa requests to the INS because it took too long to process and he just furnished his Social Security card, which was just fine for most employers, and never volunteered his visa or immigration status to his employers. Most of the employers did not ask about his immigration status or right to work in the U.S., until the application to Tahoe Forest in early 1996. Mr. Atherton advised that he had contacted the INS office in Sacramento in mid-1998, after his marriage, to obtain a permanent resident card. Mr. Atherton concluded the conversation by stating, "I knew the day would come, I knew it would catch up with me."

23. Mr. Atherton does have permanent residence status in the U.S. He provided a copy of the card to both his employer and the investigator on October 12, 1999. The INS did indeed spell his name wrong, and a correction is being made. He furnished a copy of the Accusation to Ms. Larson. He provided copies of his marriage certificate, birth certificate, letters confirming his completion of volunteer physical therapy community service at North Tahoe High School Boy's Soccer team. Mr. Atherton furnished the investigator a declaration under penalty of perjury on December 30, 1999, at her request, clarifying many of the discrepancies and inaccuracies created by his behavior toward the INS, some of his employers, the Colorado Board and the investigator. He admitted that his statements on the INS Form I-9 and the application were false, and that some of his statements to the investigator were false. It was not proved that any of the contents of the declaration were false or misleading. Mr. Atherton concluded his declaration with the following comments, "In conclusion, I know what I have done was wrong, particularly looking back now in hindsight. At the time I was a young man without responsibilities over in America and most concerned with having a good time, and did not really realize I was breaching laws, more just side stepping red tape which seemed like the norm if you were a foreigner in the USA. Now my life has changed. I have obligations, a wife, child, and house. I need to keep my P.T. license for myself and in order to support my family."

24. It was not disputed that the dishonesty with his employer on the job application, on the INS I-9 Form, and with the Board's probation monitor and the Board's investigator in September 1999 interview were all acts that are substantially related to the qualifications, functions and duties of a Physical Therapist licensee. Mr. Atherton did not dispute that a health care professional such as a Physical Therapist must be particularly honest and ethical, particularly in dealing with governmental entities and insurers, and that his behavior invokes concerns in this area. He did correctly point out, however, there is no evidence of any sort raising even a hint of unethical or dishonest behavior or dealings with a Physical Therapy patient, insurer, hospital, employer or governmental entity regarding his actual practice of Physical Therapy.

25. Notwithstanding an impressive collection of fraud and lies surrounding his immigration status, Mr. Atherton presented considerable evidence that he is otherwise a model citizen in his community, personally and professionally. He is admired and respected as a Physical Therapist, and there is not a scintilla of evidence regarding any quality of care or competence issue in Mr. Atherton's 16 years as a licensee in California, and more than 12 consecutive years of practice in the North Tahoe/Truckee area. Mr. Atherton has earned an outstanding reputation for careful and caring physical therapy and has developed a loyal following of patients, several of whom took the time and trouble to appear and testify for him, and many others of whom wrote letters of support, all of whom attribute outstanding results to his attentive and skillful care. In something of an irony, considering the immigration mess Mr. Atherton created for himself and his dishonest dealings with the Board's investigator, Mr. Atherton has earned an outstanding reputation for personal honesty and integrity among those who know him well, both personally and professionally. He is valued and trusted by his employer, patients and friends alike and is considered completely ethical and reliable.

The testimony of his wife, former patients, some of whom were quite passionate in their support of Mr. Atherton, and the numerous letters of support offered by Mr. Atherton were compelling. Particularly noteworthy were the letters of support from Mr. Atherton's professional peers and the letter of support from his father-in-law, Captain Rundberg. All the support witnesses and writers of letters appeared to be fully informed regarding Mr. Atherton's dishonesty with the INS and his immigration transgressions.

26. There remains a most serious question regarding Mr. Atherton's present suitability for probation, considering his dishonesty with his probation monitor the last time he was on probation, and his dishonesty with the Board's investigator when she interviewed him in September 1999, in conjunction with his Petition for Early Termination of Probation and his other acts of dishonesty and deception. Mr. Atherton's intentional dishonesty was not limited to the more distant past in Colorado and with the INS. His dishonesty with the probation monitor, the Board's investigator, and his employer invoke grave concerns. On the other hand, the matter is broader than it once was, because it now also involves his wife and young daughter, to both of whom he is quite obviously very devoted, his very supportive employer who obviously values him highly, his patients who seek him out and refer their friends to him, a significant network of rather close and supportive friends, all of whom came to bat for him when he faced this challenge. Mr. Atherton has also become quite involved in his community, volunteering his services to the local Muscular Dystrophy Association and coaching soccer. The process of facing a challenge of losing all he has built in the U.S. has caused him to realize how much he loves living in America and how much he wants to stay, and that the cost of his dishonesty is potentially very high. He pointed out he is a faithful taxpayer and strong supporter of the U.S. as his adopted home. Mr. Atherton may indeed be making a concerted effort to get the past lies behind him and live free of the fear of detection that has hung over him for many years. He now has developed a life composed of a considerable number of people very important in his life he has a huge interest in not letting down. The strong indication that Mr. Atherton was, and remains, a liar for convenience sake is another serious concern, however, especially in light of his dealings with the probation monitor and the Board's investigator. How much of Mr. Atherton volunteering to tell the whole truth to the investigator in early October 1999 was the result of his own independent initiative and how much was instead the product of realizing the web was becoming unraveled by an investigator who was cleverly picking up all the pieces and putting them together will never be known. Similarly, although Mr. Atherton did eventually make a full confession of the truth, signed a declaration that contained elements that might never have been independently discovered, and made considerable efforts to settle all outstanding issues with the INS, the extent to which these acts reflect a reformation on Mr. Atherton's part remains unclear.

27. On balance, Mr. Atherton is not a suitable candidate for probation, and his license should be revoked outright. Notwithstanding the dearth of any evidence of quality of care issues, and the fact that the evidence was overwhelming that Mr. Atherton is a very skillful, competent and safe practitioner, to permit Mr. Atherton to retain his license at this time carries an undue risk to the public health, safety and

welfare. Mr. Atherton continues to fail to acknowledge the gravity of his past dishonest and deceptive acts. In particular, he continues to regard his lying to the INS, his lying to the Board's probation monitor, and his lying to his employer as mere avoidance of red tape.

28. As found by the Administrative Law Judge, the costs of investigation and prosecution of this matter were introduced in the form of a declaration from the Deputy Attorney General. She spent 10 hours preparing and prosecuting the matter, and the Board was charged the sum of \$1,120 for her services. The costs are presumed reasonable and were not contested. Costs for investigative services were not sought.

LEGAL CONCLUSIONS

1. "The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

"..."

"(I) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist."²

2. It was not disputed that Mr. Atherton violated Section 2660 (I) when he committed dishonest acts with his employer, with the INS, with the Board's probation monitor and the Board's investigator in September 1999, all of which were acts substantially related to the qualifications, functions and duties of a Physical Therapy licensee. Legal cause exists to revoke or suspend Mr. Atherton's license to practice as a Physical Therapist.

3. "(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of the assessed costs specified in the proposed decision.

(c) When the payment directed in an order for payment of costs is not made by the licensee, the board may enforce the order of payment by bringing an action in any

² Business and Professions Code Section 2660(I).

appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license or approval of any person who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license or approval of any person who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one year period for those unpaid costs.

(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.”³

4. As determined and awarded to the Board by the Administrative Law Judge, the reasonable costs of investigation and prosecution of this matter are \$1,120.00.

5. Weighing all the facts and circumstances in this matter, Mr. Atherton's license should be revoked. Even though Mr. Atherton's quality of care, competence and skill as a Physical Therapist are unquestioned, Mr. Atherton's pattern and practice of repeated acts of dishonesty and deception to the Board's representatives, to the INS, and to his employer, coupled with his evident lack of remorse for those acts, require the revocation of Mr. Atherton's license.

³ Business and Professions Code Section 2661.5.

ORDER

License number PT 14387, issued to John Joseph Atherton, P.T. is revoked. Mr. Atherton shall reimburse the Board the sum of \$1,120.00, the actual and reasonable investigative and prosecutorial costs incurred by the Board. Mr. Atherton shall make the reimbursement within 30 days from the effective date of this Decision, unless the Board, in its discretion and upon request of Mr. Atherton, agrees in writing to payment by an installment plan.

This Decision shall become effective on the 20th day of January, 2003

DATED: December 19, 2002

Original Signed By
DON CHU, PhD., PT
President, Physical Therapy Board